

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 157 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

YUSUFBHAI ABDULBHAI SHEIKH

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Appearance:

Mr.M.A.Bukhari, ADDL.PUBLIC PROSECUTOR, for the Petitioner  
Mr.P.M.Thakkar, Advocate for the respondent.

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CORAM : MR.JUSTICE D.G.KARIA  
Date of decision: 18/06/96

ORAL JUDGEMENT

The State has preferred this appeal for enhancement of the sentence against the respondent-accused. The respondent-original accused in Criminal Case No.1036/84 in the Court of the learned Chief Judicial Magistrate, Nadiad, came to be convicted for the offence under sections 409 and 477A of the Indian Penal Code. The learned Chief Judicial Magistrate sentenced the respondent to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for 30 days for the offence under section 409 of the Indian Penal Code. The accused was also sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.250/-, in default to undergo simple imprisonment for 10 days for the offence under section 477A of the Indian Penal Code. Both the substantive sentences were ordered to run concurrently. The said judgment and order of conviction and sentence passed on January 31, 1989 is under challenge in this appeal, so far as it relates to the quantum of sentence.

The respondent was the Sub Treasury Officer at Thasra during the period from June 12, 1981 to December 16, 1981 when he bought Government postal stamps of various denominations and did not credit it in the accounts of Sub Treasury Office at Thasra. The accused, who was thus being entrusted with the Government postal stamps or having dominion over such postal stamps in his capacity as the Sub Treasury Officer at Thasra, committed criminal breach of trust in respect of the Government postal stamps worth Rs.2,32,358/-. It was also alleged that the accused being a Government Officer as Sub Treasury Officer, Thasra, wilfully and with intent to defraud, falsify and/or defraud, made or abetted the making of false entry and amendment of the rules of accounts relating to the maintenance of the Government stamps and made false entries in the Register and thereafter concocted a false receipt. The accused was thus alleged to have committed offences punishable under sections 409 and 477A of the Indian Penal Code.

The learned Chief Judicial Magistrate, Nadiad, framed charge Exh.3 in respect of the aforesaid offences. He, thereafter, having recorded the necessary evidence of the prosecution witnesses and on examination of the other relevant material placed before him, convicted and

sentenced the accused-respondent as aforesaid. The State, being aggrieved by the said judgment and order, so far as it relates to the quantum part of the sentence, preferred the present appeal, as noted hereinabove.

Mr. M.A. Bukhari, the learned Addl. Public Prosecutor appearing for the appellant-State, submitted that the accused committed criminal breach of trust and falsification of accounts in respect of the Government stamps worth Rs.2,32,358/- and having regard to the value of such stamps, the learned Magistrate awarded sentence leniently. The sentence provided for the offence under section 409 of the Indian Penal Code is imprisonment for life or imprisonment of either description for a term which may extend to ten years and also fine. Section 477A provides punishment on proof of the guilt of the offence of falsification of accounts, etc. of imprisonment of either description for a term which may extend to seven years, or with fine, or both.

The learned Magistrate, having found the respondent-accused guilty, sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for 30 days for the offence under section 409 of the Indian Penal Code, and also sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs.250/-, in default to undergo simple imprisonment for 10 days, for the offence under section 477A of the Indian Penal Code, for which he has recorded the reasons in para 12 of the impugned judgment. According to him, there is no previous offence or conviction of the respondent. The respondent was young. Besides, he has liabilities of his family and children. Having regard to all the facts and circumstances of the case, the learned Magistrate awarded the sentence as noted hereinabove. Prima facie, there appears to be some substance in the submission of Mr. Bukhari, for having regard to the substantial amount of the value of the stamps, the learned Magistrate should have awarded more sentence to the respondent-accused, in view of the punishments provided for the offences under sections 409 and 477A of the Indian Penal Code. However, the judgment and order of conviction and sentence is of January 31, 1989. Accordingly, the respondent has served out the sentence way back in June 1989. It is, therefore, not just and proper that after lapse of about 7 years the respondent be again sent to jail by enhancing the sentence. The respondent-accused, on being convicted and sentenced,

would have lost his job as the Sub Treasury Officer. Thus, he would have paid the price for the misconduct and the offence which he had committed. The learned Magistrate, having considered the facts and circumstances and the evidence of the case, awarded above sentence. After a lapse of about 7 years, I do not find it just and proper to disturb that order of sentence, inasmuch as it is likely that the respondent would have settled in his life and the order of enhancement of sentence would disturb his entire family-life and in a way it would amount to causing disturbance to other family-personnel of the respondent. In the totality of the circumstances, the appeal deserves to be dismissed, and is hereby dismissed.

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